

**DECISION**

*R. Pool PLM*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

8182

FILE: B-192445

DATE: November 6, 1978

MATTER OF: Daniel Moy - Shipment of Privately Owned  
Vehicle at Government Expense

- DIGEST:
1. Claim of transferred Federal employee for reimbursement for shipment of privately owned vehicle to new official station in Guam was properly denied where agency head would not authorize transportation as in the Government's interest pursuant to 5 U. S. C. 5727(b)(2) and Federal Travel Regulations, FPMR 101-7, paragraph 2-10. 2(c).
  2. Section 5727(b)(2) of title 5, U. S. C., and Federal Travel Regulations, FPMR 101-7, paragraph 2-10. 2(c) vest discretionary authority in agency heads to determine whether transportation of privately owned vehicles is in the Government's interest. The determination is a factual matter to be decided on a case-by-case basis, and therefore there is nothing arbitrary and capricious about an authorization policy of an agency head in 1975 merely because it is changed by his successor in 1978.

This decision is in response to a letter dated June 27, 1978, from Mr. Daniel Moy, appealing the decision of our Claims Division in Settlement Certificate Z-2728649, September 26, 1977, which disallowed his claim for reimbursement in the amount of \$1,103.80 for shipment of his privately owned vehicle from port of New York to Agana, Guam, in September 1975, in connection with a transfer of official station incident to employment with the Department of the Interior on August 14, 1975.

Settlement Certificate Z-2728649, September 26, 1977, provides the following review of the basis of Mr. Moy's original claim:

"It is your contention that your situation does meet the criteria set forth at paragraph 2-10. 2(c) of the Federal Travel Regulations (FTR) to justify a determination that it is in the interest of the Government for you to have the use of your privately owned vehicle at your post outside the conterminous United States

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and that the decision of the Government Comptroller for Guam not to authorize transportation of your privately owned vehicle at Government expense was arbitrary and capricious."

Under the Federal Travel Regulations (FTR), FPMR 101-7, paragraph 2-10.2(c), dated May 1973, which implement the statutory requirements of 5 U.S.C. 5727(b)(2), a privately owned vehicle may be shipped at Government expense only if the head of the department or his designee determines that it is in the interest of the Government for the employee to have the use of a privately owned vehicle at his port of duty outside the continental United States. The administrative record before this Office clearly indicates that in the case of Mr. Moy, an employee assigned to the office of the U.S. Government Comptroller for Guam, authority to make the necessary determination and provide authorization for shipment of automobiles at Government expense in August 1975 was delegated to Mr. Floyd Fagg, the Government Comptroller for Guam. The record reflects with equal clarity that at the time of Mr. Moy's transfer of official station, the Government Comptroller for Guam denied shipment of Mr. Moy's privately owned vehicle. This decision was based on the discretionary authority vested in the Government Comptroller by the provisions of 5 U.S.C. 5727(b)(2), and was consistent with the policy regarding shipment of privately owned vehicles at Government expense established by Government Comptroller Fagg in 1972.

In the absence of a proper authorization required by law, our Claims Division concluded that there was no allowable basis for authorizing payment on Mr. Moy's claim.

In appealing the denial of his claim in Settlement Certificate Z-2728649, September 26, 1977, Mr. Moy has not presented any evidence of any error of fact or law contained in that adjudication. Rather his appeal is based upon the submission of new evidence to support his contention that the decision of Government Comptroller Fagg in August 1975 not to allow the claimant to ship his privately owned vehicle at Government expense was arbitrary and capricious. Mr. Moy contends that in April 1978 an automobile arrived in Guam that was shipped at Government expense by authorization of the present acting Government Comptroller, Mr. Axel Heimer. In addition to this vehicle, Mr. Moy contends that another

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individual was authorized in June 1978 to ship his privately owned vehicle from Guam to the Marshall Islands. In Mr. Moy's view these two instances demonstrate dissimilar treatment of similarly situated individuals which tends to show that Government Comptroller Fagg's decision in 1975 was arbitrary and capricious.

In our decision in B-186578, January 3, 1977, we addressed a similar claim presented by a Supervisory Auditor in the office of the U.S. Government Comptroller for the Virgin Islands. The claimant contended that a change in policy in the latter part of 1971 which allowed transportation of privately owned vehicles to the Virgin Islands constituted recognition that the previous policy under which he was denied similar authorization in 1970 was in error, and therefore he was entitled to reimbursement in the amount of his claim.

Our decision in that case noted that the record did not support the allegation of error, but reflected only that a change in policy had occurred. We concluded in part that:

"Legal rights and liabilities concerning travel allowances are established at the time the travel is performed under the travel authorization and the authorization may not be revoked or modified retroactively so as to increase or decrease the rights which have become fixed under the applicable statutes or regulations." (Emphasis added.) See also B-175433, April 27, 1972.

We have held that exceptions to the above rule may be made only when an error is apparent on the face of the orders and all facts and circumstances clearly demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence in preparing the orders. See B-175433, supra; and B-186578, supra.

Therefore, since authorizing officials intended not to provide reimbursement of the cost of transporting Mr. Moy's privately owned vehicle to Guam, and since the administrative record accurately reflects Mr. Moy's complete understanding of that fact, the permissible exception is not applicable in the instant case.

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For purposes of this decision we presume that the facts Mr. Moy offers as new evidence are valid. However we cannot find that these two instances of authorization by the acting Government Comptroller for Guam in April and June of 1978 are legally relevant to authorization decisions made by the previous Government Comptroller in 1975. The new evidence only tends to indicate that a change in policy regarding authorization for transportation of privately owned vehicles at Government expense may have taken place under the acting Government Comptroller in 1978. Such a policy change is sanctioned by 5 U.S.C. 5727(b)(2) and consistent with paragraph 2-10.2(c), FTR, FPMR 101-7, which vest discretionary authority in agency heads to determine whether transportation of privately owned vehicles is in the Government's interest. The determination is a factual matter to be decided on case-by-case basis, and therefore there is nothing inherently arbitrary and capricious about an authorization policy of a Government Comptroller in 1975 merely because it is changed by his successor in 1978.

In the complete absence of relevant evidence presented in the record that the determination of the Government Comptroller for Guam in denying Mr. Moy transportation of his privately owned vehicle at Government expense amounted to an abuse of the discretionary authority provided by 5 U.S.C. 5727(b)(2) and paragraph 2-10.2(c), FTR, FPMR 101-7, there remains no basis on which to allow Mr. Moy's claim.

Concerning the question as to what other courses of action are available, the decision of the Comptroller General of the United States rendered on claims settled by the General Accounting Office are conclusive upon the executive branch of the Government. See 31 U.S.C. 74. Independently of the jurisdiction of the General Accounting Office, however, the United States Court of Claims and the United States District Courts have jurisdiction to consider certain claims against the Government if suit is filed within 6 years after the claim first accrued. See 28 U.S.C. 1346(a)(2), 1491, 2401 and 2501.

Accordingly, the adjudication of our Claims Division in Settlement Certificate Z-2728649, September 26, 1977, is sustained.

Deputy

*R. P. Ketter*  
Comptroller General  
of the United States